

**REMARKS/ARGUMENTS**

Claims 1, 4 and 6-27 stand rejected. Reconsideration is respectfully requested in view of the following remarks and arguments.

The rejection of claims 14 and 15 under 35 U.S.C. 112, first paragraph, is respectfully traversed. The Examiner has stated that the specification provides no basis for the rodent being a mouse or the dimensions of the enclosure being of a size related to a mouse. This is incorrect. For example, at page 3, lines 19-20, it is specifically stated that the rodent can be a mouse. Further, at page 3, lines 12-14, an example of the enclosure is provided, along with dimensions that are clearly of a size related to a small rodent such as a mouse. It is respectfully submitted that this rejection is clearly in error and should be withdrawn.

The rejection of claims 1, 4 and 6-27 under 35 U.S.C. 102(b), based on an alleged public use or sale of the invention more than one year before the earliest effective filing date of the present application, is respectfully traversed for the reasons set forth below.

Initially, it is respectfully submitted that all of the early field trials of the devices that led to the present invention, including the field trial that was conducted on Mason's Island, Connecticut, starting in 1999, were brought to the Examiner's attention in the initial Information Disclosure Statement in the present application, which was filed on February 23, 2004. It is not understood why the instant rejection under 35 U.S.C. 102(b) is being made now, for the first time, as a final rejection, when it could have been made earlier, in the first office action. Applicants do not believe that any of the amendments made in the Amendment dated April 14, 2005, necessitated this rejection.

In view of the fact that this rejection is being made for the first time as a final rejection and that this Response is applicants' first opportunity to address this rejection, it is respectfully requested that the Examiner consider the arguments set forth below and the attached Declaration

in the present application, without requiring applicants to file an RCE or continuation application.

The Examiner has cited the abstract from a presentation given in 2004 by authors that include some of the inventors for the present application, as evidence that the device claimed in the present application was in public use more than one year before the earliest effective filing date for the present application, which is June 16, 2000. As discussed above, it is respectfully submitted that these early field trials were brought to the Examiner's attention in the Information Disclosure Statement filed on February 23, 2004 (see, for example, documents CA, CB, CL, CN and especially CO, which contains a detailed description of the Mason's Island field trial, including the important dates associated with that field trial). As discussed in more detail below, these early field trials used devices or "boxes" that were different than the apparatus described and claimed in the present patent application. Further, assuming *arguendo* that these early boxes fall within the broadest scope of the present claims, the field trial at Mason's Island would clearly constitute a permissible experimental use of the invention (see MPEP 2133.03).

As explained in the attached Declaration of inventor Gary Maupin, the boxes that were used in the Mason's Island field trial did not include the "flexible web" applicator that is described and claimed in the present invention. Specifically, the applicators in these boxes were a cotton mop string that was stapled or glued to the lid of the box and strips of a kitchen scrub pad that were stapled or glued to the lower sides and/or floor of the box.

The cotton mop string applicator hung down into the interior of the box but was not connected to a "horizontal support member", as that term is used in the claims. Further, the cotton mop string cannot be considered to be a "flexible web", as that term is used in the claims.

The kitchen scrub pad applicator of the boxes was fixed to the lower wall and/or floor of the boxes and therefore cannot be considered to be a "flexible web", as that term is used in the

present claims. Further, these applicators are also clearly not “suspended into the interior of the enclosure” or “suspended from a horizontal support member”.

In addition to the above, the structure of the interior of the boxes could not be viewed from the outside of the boxes. Therefore, in the unlikely event that a member of the public came into contact with one of the boxes, they would not be able to discover most of the structural elements of the present claims.

Finally, it is respectfully submitted that the field trial on Mason’s Island constituted an experimental use of the devices and was performed to determine if the devices would work for their intended purpose. As explained in the attached Declaration, and further evidenced in the dates provided in the above-discussed document CO (cited in the Information Disclosure Statement), these first crude devices were not even placed into the field at Mason’s Island until May 16 or 17, 1999, and the first inspection of the boxes did not occur until about June 25, 1999, which is after the “critical date” for the present rejection under 35 U.S.C. 102(b). The data collected from the first inspection of the boxes was only preliminary data that was insufficient to determine if the boxes were working for their intended purpose. Further, it was not until all of the data from the field trial was collected and analyzed (which occurred after September of 1999) that it was determined that the boxes were working for their intended purpose. Less than one year later, the grandparent application to the present application was filed.

It is respectfully submitted that the above-discussed field trial on Mason’s Island: (1) was not for commercial purposes; (2) used boxes that had a design that was different from the boxes described and claimed in the present patent application; (3) was performed to determine if the devices would work for their intended purpose; (4) did not establish that the boxes worked for their intended purpose until after the critical date (i.e., after June 16, 1999); (5) resulted in design changes that are reflected in the boxes that are described and claimed in the present application; and (6) were always under the control of at least one of the inventors. As such the field trial

constituted a permissible experimental use of the devices and cannot be viewed as a statutory bar to the patentability of the invention of the present claims under 35 U.S.C. 102(b).

In view of the above, it is respectfully submitted that claims 1, 4 and 6-27 are in condition for allowance.

Dated: September 6, 2005

Respectfully submitted,

By 

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Enclosure: Declaration Under 37 CFR §1.132 (Gary O. Maupin)